

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 7959 of 1996****WITH****CIVIL APPLICATION No. 7946 of 2005****IN****SPECIAL CIVIL APPLICATION No. 7959 of 1996****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

STATE OF GUJARAT & 1 - Petitioners**Versus****NATHUBHAI N BHARAI & 1 - Respondents****Appearance :**

MR LB DABHI, AGP for Petitioners.

MR HASIT JOSHI for Respondent No. 1.

RULE SERVED for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/12/2005

COMMON ORAL JUDGMENT

1.The petitioners have filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the award passed by the Presiding Officer, Labour Court, Jamnagar on 20.02.1996 in New Reference (LCJ) No. 542/90.

2.This Court has issued notice on 22.10.1996 and ad-interim relief was granted in terms of para 9 (B) of the petition whereby the impugned award dated 20.02.1996 was stayed by the Court. The petition was thereafter admitted and rule was issued on 15.04.1997 and interim relief was confirmed. The petition was thereafter dismissed for default on 07.08.2001 and interim relief granted was vacated. The petitioner thereafter moved M.C.A. No. 39 of 2004 for

restoration of Special Civil Application No. 7959 of 1996. The said M.C.A. was allowed by the Court vide order dated 06.02.2004 and Special Civil Application No. 7959 of 1996 was restored.

3. After restoration of Special Civil Application No. 7959 of 1996, the present respondent has moved C.A. No. 7946 of 2005 seeking direction from this Court to the petitioners to comply with Section 17-B of the I.D. Act, 1947 by paying to the applicant – workman last drawn wages for the period from the date of the impugned award till 07.08.2001. The respondent – workman has also prayed for the direction to the petitioners to reinstate him on his original post with continuity of service and full wages from 07.08.2001 till the date of his actual reinstatement with all other consequential benefits. The applicant has also made an alternative prayer to the effect that

if the petitioners are not at all interested in reinstating the applicant, the petitioners may be directed to pay full wages to the applicant during the pendency of the present petition.

4. Rule was issued by this Court in the said Civil Application on 05.09.2005. The Court thereafter directed the office to place the said C.A. along with the main petition and it was decided to hear the main matter itself instead of passing any order in civil application and that is how the matter is taken up for final hearing today.

5. Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the petitioners has submitted that the respondent No. 1 has been appointed as a Work charge clerk purely on temporary and probationary basis for a period of two months vide order dated 01.03.1984. As per the existing rules and regulations, his

expenditure was to be borne on contingent fund and on a project under construction work. He has further submitted that the terms of appointment reflected to the effect that appointment was fixed for the time duration and liable to be terminated without notice. The respondent No. 1 accepted the terms and conditions as reflected in contractual appointment and agreed upon with the terms and reported on duty on 07th March, 1984. Mr. Dabhi has further submitted that the respondent workman was continued upto 20.07.1985 by issuing different appointment orders for a fixed period and purely on temporary basis and on expiry of the contractual period, no further work or assignment was given and the assignment came to an end on 19.12.1985.

6.The respondent workman thereafter filed Reference before the Labour Court and it was contended by him before the Labour Court that

he had completed 240 days and in absence of notice, there was a question of violation of Section 25-G and H of the I.D. Act. The Labour Court vide award dated 20.02.1996 has come to the conclusion that the respondent workman was relieved from his job without issuance of any notice and without complying with the provisions contained in Section 25-F of the Act. The respondent workman was, therefore, entitled to be reinstated. However, the Labour Court has found that the respondent workman was gainfully employed and hence, reinstatement order was passed without any back wages.

7.It is this order of the Labour Court which is under challenge in the present petition.

8.Mr. Dabhi has further submitted that the respondent No. 1 was not appointed as a skilled or unskilled labourer but was appointed as work charge clerk for the fixed time duration. By

afflux of time the assignment came to an end. There was no reason to direct the administration to enter into the contract and to make appointment ignoring all the statutory rules which are framed under the proviso to Article 309 of the Constitution of India. He has further submitted that the Labour Court has committed an error while appreciating the facts that it is settled legal position settled by the Apex Court to the effect that if the contracts and/or terms of appointment provides for termination without notice then it cannot be imported that notice should be given. Therefore, there is an error of law and facts in failure to follow the law settled by the Apex Court. He has further submitted that so far as contractual appointments are concerned, there is an express provision made under Section 2(oo) (bb) which excludes the attraction provision made under the Industrial Disputes Act. He has further submitted that

there remained no post on completion of the projected work and there remained no work on which ad hoc arrangement can be made. He has, therefore, submitted that the direction of the Labour Court to give an appointment which was not permissible under the provisions of the law and statutory rules, is not tenable at law. He has, therefore, submitted that the Labour Court was not justified in directing the petitioners to reinstate the respondent – workman with continuity of service.

9. In support of his submissions, Mr. Dabhi has relied on the decision of the Hon'ble Supreme Court in the case of Executive Engineer (State of Karnataka) V/s. K. Somasetty and others, AIR 1997 S.C. 2663 wherein the Hon'ble Supreme Court has held that since the Project has been closed, the respondent has no right to the post since he had been appointed on daily wages. The Hon'ble Supreme Court has further observed that

the order of reinstatement has been placed which indicated that at the threat of contempt of Court, the order has been enforced. It was stated therein that it was subject to final order of the Court in that appeal. Hence, despite reinstatement, the Hon'ble Supreme Court has quashed and set aside the order passed by the Labour Court.

10. Mr. Dabhi has further relied on the decision of the Hon'ble Supreme Court in the case of Himanshu Kumar Vidyarthi and others V/s. State of Bihar and others, AIR 1997 S.C. 3657 wherein the Hon'ble Supreme Court has observed that when the appointments are regulated by the statutory rules, the concept of 'industry' to that extent stands excluded. The Court further observed that admittedly, the respondent workmen were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are

temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The Court further held that the concept of “retrenchment”, therefore, cannot be stretched to such an extent as to cover these employees. The Court has further observed that since they are all daily wager employees and have no right to the posts, their disengagement is not arbitrary.

11.Mr. Dabhi has further relied on the decision of the Hon'ble Supreme Court in the case of State of U.P. and another V/s. Ram Krishna and another (1999) 7 S.C.C. 350 wherein the Hon'ble Supreme Court has observed that by the second appointment letter, the respondent was appointed only for a period of three months purely on a temporary basis subject to termination without notice, therefore, the

respondent was not in regular government service. The Court has further taken the view that his position was like that of a probationer. As during the period of service of the respondent the authority found that the services of the respondent were not satisfactory and accordingly terminated them, it cannot be said that the termination order was bad in law. The Court took the view that this fact was sufficient for them to hold that the impugned order was an order of termination simpliciter of a temporary government servant namely the respondent, therefore, the provisions of Article 311 would not be attracted.

12.Mr. Dabhi has lastly relied on the decision of the Hon'ble Supreme Court in the case of Range Forest Officer V/s. S.T. Hadimani, (2002) 3 S.C.C. 25 wherein the Hon'ble Supreme Court has observed that where the workman's claim that he

had worked for more than 240 days in the year preceding to his termination was denied by the employer, it was held that it was for the workman to lead evidence to that effect and his mere affidavit was not sufficient evidence for that purpose.

13. Based on the aforesaid factual matrix and the legal authorities, Mr. Dabhi has submitted that the award passed by the Labour Court should be quashed and set aside.

14. Mr. Hasit H. Joshi, learned advocate appearing for the respondent – workman, on the other hand, has supported the order of the Labour Court. He has submitted that the Labour Court has come to the specific finding that the respondent – workman worked for 240 days in one year and hence, the petitioners should have complied with the provisions contained in the Industrial Disputes Act. He has further

submitted that juniors to the respondent workman were retained and the respondent was retrenched without complying with the relevant provisions of the I.D. Act. The Labour Court has passed three awards simultaneously and against 2 awards, no petition was filed before this Court whereas in the case of the respondent only, the petitioners have filed the petition. He has, therefore, submitted that the action of the petitioners is highly discriminatory and violative of Article 14 of Constitution of India. Lastly, he has submitted that the petitioners have not complied with the provisions contained in Section 17-B of the I.D. Act. Initially, there was a stay granted by this Court. However, the petition was dismissed for default and stay was vacated. He has, therefore, submitted that the respondent is entitled to benefit under Section 17-B of the Act. The Labour Court has come to the just and fair conclusion after appreciation

of evidence and the same cannot be disturbed while exercising power under Article 226 of the Constitution of India. He has, therefore, submitted that the award passed by the Labour Court should be upheld.

15. After having heard learned advocates appearing for the respective parties and after having gone through the award passed by the Labour Court as well as the facts stated and averments made in the petition and the authorities relied on by Mr. Dabhi, the Court is of the view that the Labour Court has committed an obvious error in directing the petitioners to reinstate the respondent – workman. The Labour Court has ignored the material aspect of the matter that the respondent's appointment was for a fixed period. Initially, the appointment order was issued for two months and that was subsequently renewed from time to time till the project was not over. As soon as the project was over,

fresh appointment order was not issued. The position is well settled in law now that when the appointment is made for a fixed period and that too for a particular project and as soon as that project is over or the fixed period is over, the concerned workman has no right to claim any appointment to that post. The authorities relied upon by Mr. Dabhi duly support the case of the petitioners. These aspects have not been taken into consideration by the Labour Court. Even the Labour Court, while coming to the conclusion that the respondent – workman has completed 240 days, has not examined as to whether the respondent – workman has completed 240 days in the preceding year. In any case, the fact still remains that the appointment was for fixed period and for a particular project and hence, there is no right with the respondent – workman to claim any appointment on that basis.

16.As far as the contention raised by Mr. Joshi that in other two awards, the State Government has not preferred any petition challenging the awards of the Labour Court whereas in the case of the respondent workman only, the petition was filed, the Court is of the view that it is not a ground to uphold the impugned award. Even otherwise, while perusing those two awards, copies of which are shown to the Court, it appears that those workmen were appointed prior to the date of appointment of the present respondent – workman. Even otherwise, it is left to the discretion of the authorities as to which order should be challenged to the higher forum. In that case, there is no question of invoking the provisions of Article 14 of the Constitution of India on the ground that it is discriminatory.

17.Taking overall view of the matter and considering the legal position, the Court is of

the view that the award passed by the Labour Court deserves to be quashed and set aside. It is accordingly quashed and set aside.

18. Before parting with this judgment, it is, however, observed that present petitioners have not paid the cost of Rs. 1,000/- to the respondent – workman, which was awarded by this Court while restoring this petition. Moreover, the present respondent – workman has filed C.A. No. 7946 of 2005 on 23.02.2004. However, the same was moved only on 05.09.2005. For proper compliance of the provision under Section 17-B, the concerned workman has to file affidavit before the Court. If this application is treated as the affidavit, in that case, the respondent workman will be entitled to wages from 23.02.2004. Taking this view of the matter, though the petition is allowed and the award is quashed and set aside, the petitioners are hereby directed to pay

wages u/S. 17-B of the Act to the respondent – workman for the period from 23.02.2004 till this date and also pay Rs. 1,000/- as was ordered to be paid by this Court earlier at the time of restoration of this petition, forthwith.

19. Subject to the aforesaid direction, the petition is allowed. Rule is made absolute without any order as to costs.

20. In view of disposal of main petition, C.A. No. 7946 of 2005 is accordingly disposed of.

[K.A. PUJ, J.]

Savariya